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Root, Elihu

The Association of the bar of the city of New York

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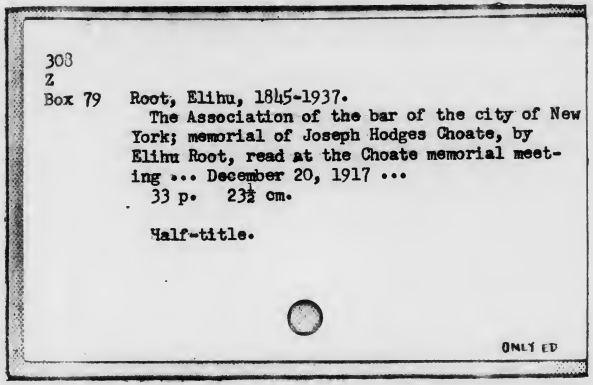
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THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

MEMORIAL

OF

JOSEPH HODGES CHOATE

BY

ELIHU ROOT

READ AT THE CHOATE MEMORIAL MEETING, HELD AT THE ROOMS OF THE ASSOCIATION, THURSDAY EVENING, DECEMBER 20, 1917

AND

MINUTE AND RESOLUTION ADOPTED BY THE ASSOCIATION

21 April 1920 Smd

The Association of the Bar of the City of New York

MEMORIAL OF JOSEPH HODGES CHOATE

BY

ELIHU ROOT

JOSEPH HODGES CHOATE was born in Salem, Massachusetts, January 24th, 1832, and died at his home in the City of New York, May 14th, 1917, in the fourth month of his 86th year. He was graduated from Harvard College in the class of 1852, and from the Harvard Law School in 1854. He was then for a year a student in the office of Leverett Saltonstall of Boston, and he was admitted to the Bar of Massachusetts in 1855. In September of the same year he removed to New York City; and after passing a few months in the office of Scudder & Carter, he entered the office of Messrs. Butler, Evarts & Southmayd, where he remained for nearly three years. In the meantime, in 1856, he was admitted to the Bar of New York. In August, 1858, he formed a law partnership with Mr. W. H. L. Barnes, subsequently a leader of the Bar of California; but early in the following year he returned to his former associates, and became a partner in the law firm of Evarts, Southmayd & Choate, a relation which continued throughout the entire professional lives of the partners. He was married in October, 1861, to Miss Caroline Dutcher Sterling. There were five children of the marriage, three sons and two daughters, of whom three survive, one daughter and two sons, one of whom bears his father's name and is a member here. Mr. Choate was one of the founders of this Associa-

tion, a signer of the preliminary articles by which it was created in December, 1869. He was President of the Association in 1888 and 1889, President of the Bar Association of the State of New York in 1906 to 1908, President of the American Bar Association in 1898 and 1899, and President of the New York County Lawyers' Association. He was a member of the Commission of 1890 appointed by the Governor under legislative authority to report a revision of the judicial system of the State of New York. He was President of the Constitutional Convention that in 1894 framed the Constitution under which the people of the State still live. In January, 1899, he was appointed Ambassador from the United States to Great Britain, and he served his Country in that office for six years until May, 1905. On the 10th of April, 1905, the Bar of England claimed him as a fellow of that great company by electing him to be a Bencher of the Middle Temple. Upon his return to his home he resumed his activity at the Bar; but in 1907 he was again made Ambassador, and the head of the Delegation from the United States to the Second Hague Conference, where he contributed an important part to the substantial advance in the establishment and definition of International Law and Procedure accomplished by that Conference. Upon his return from The Hague he again resumed practice, less actively of course than in earlier years.

In the meantime he had come to be a Doctor of Laws of Amherst, Harvard, Yale, Williams, Union, the University of Pennsylvania, of McGill and Toronto, of Cambridge, Edinburgh, St. Andrews and Glasgow, and a Doctor of Civil Law of Oxford.

The forty-three years which elapsed between admission to the Bar in 1856 and the Embassy to Great

Britain in 1899 were filled by the work of the pure lawyer. Neither business nor recreation nor politics nor any other interest diverted him from a continual and amazing activity in the trial and argument of causes. He was never an attorney. Circumstances and natural adaptation placed him from the beginning altogether upon the court rather than the office side of that line which exists in the nature of things between the duties of the barrister and the duties of the solicitor, and made him an advocate.

He was wise and resourceful in counsel, continually called into conference for opinion and advice for the direction of conduct and avoidance of litigation; but the main business of his life was conflict at the Bar. In all branches of the law, civil and criminal, common law and equity, military, ecclesiastical, patent, probate, marriage and divorce, constitutional, international, before juries, judges at *Nisi Prius*, arbitrators, courts martial, statutory committees and commissions, in all tribunals where judicial functions were to be exercised, up to the Supreme Court of the United States, his potent voice was heard asserting and maintaining rights for more than sixty years. He achieved the most brilliant and distinguished success. He was the delight of juries who yielded gladly to his charm, and the pride of courts who felt the dignity of their office enhanced by his appearance before them. His discussion of great constitutional questions strengthened the foundations of our free institutions. His shining example was an inspiration to the Bar and the despair of emulation.

The law reports presented continually accumulating evidence of the most substantial basis of a lawyer's reputation, for the reports of causes argued by him

supported the judgment of those who heard or read the arguments that they exhibited a wide range of sound learning, extraordinary discrimination, capacity to divine crucial questions, and power of effective presentation. The reports gave evidence also of an extraordinarily high proportion of success in the causes tried and argued, continuing through so long a period of years as to be conclusive proof of the possession of those solid qualities of advocacy which alone command enduring success. This great preponderance of success in litigation was notwithstanding the fact that for so many years of his life his conspicuous merit as an advocate brought to him great numbers of difficult and doubtful cases, in which the parties sought to overcome a probability of defeat by superiority of counsel. As the generations of the profession passed, traditions gathered about the path he had traversed,—stories of his great achievements, of brilliant attack and desperate defence, of wonderful cross-examination and masterful argument, of wise and witty sayings, of humor and satire, of imperturbable self-possession and poise, of swift insight, of courage and audacity, told by judges and lawyers and jurors and court officers, were repeated wherever lawyers gathered, and became a part of the common professional knowledge of the history of the Bar.

As he grew older in the profession, his attention as a lawyer became less exclusively concentrated upon the interests of particular cases, and was broadened in scope to include the administration of justice as a whole. The public duties of the Bar, the ethics of the profession, the lessons of its history, the inspiration of its great examples, attracted more of his thought as his experience increased. In his addresses as President of the

State and National Associations of the Bar, in his speeches to the Bar when from time to time it met upon casual occasions, in the memorials read before this Association, in his speeches to the Constitutional Convention, in many of his formal public addresses, first among which stands the noble address upon the unveiling of the statue of Rufus Choate in the Court House in Boston, he expressed so clearly the underlying spirit and purpose of the American Bar, he represented with such cogency and command the Bar at its best of real devotion to justice and liberty, that the finest thought and feeling of the profession came to follow him, and to look to him as a leader, not merely because he tried causes more skilfully or argued them more powerfully than others; but also, because he put the power and prestige of his great reputation in the courtroom behind the thrust of advocacy for the honor and public service of the Bar as a whole. He has told us what his conception of advocacy was and his whole life helped mightily to establish that high standard. He said:

> "I maintain that in no other occupation to which men can devote their lives is there a nobler intellectual pursuit or a higher moral standard than that which inspires and pervades the ranks of the legal profession. To establish justice, to maintain the rights of man, to defend the helpless and oppressed, to succor innocence, and to punish guilt, to aid in the solution of those great questions legal and constitutional which are constantly being evolved from the ever varying affairs and business of men are duties that may well challenge the best powers of man's intellect and the noblest qualities of the human heart."

Thus, the recognition of power and promise which he commanded from his seniors in the 60's was gradually succeeded by universal admiration, deference, and pride in his leadership among the juniors of his later years. Wherever the class consciousness of the Bar of New York sought expression in the comradeship of social intercourse, in protest against abuse, in repelling assaults upon the administration of justice or demands for its improvement, in concerted action upon any great public question, his came to be the sympathetic leadership, his the clear voice, the commanding authority, the unimpeachable representation of the noblest impulses of the profession. The great leaders and colleagues of his early and middle life passing from the stage left him alone without an equal or a rival, the most eminent, the most admired, and the most revered advocate and counsellor of the Bar not only of New York but of our Country.

In this Country of popular self-government, however, it did not satisfy him to be successful in the trial of causes, or to win the respect and admiration of the Bar alone. To be a great American lawyer in the broadest sense, one must be a great Citizen, and Mr. Choate was that. He realized that our system of law striking its roots far back in the customs and struggles in which the liberties of England were developed, shaped by the fathers of the Republic to suit the conditions of a freer life, adapted from generation to generation to meet the new requirements of National growth, rests always upon the foundation of general public conviction that it is fit and adequate to secure justice and to preserve individual liberty. He knew that public respect for law, public confidence in the judicial system through which the law is administered, public faith

in the wisdom and rightfulness of those great rules of conduct which we have written into our Constitutions for the limitation of official power in its relation to the life, the liberty, and the property of the private citizen, are essential to the maintenance of the most vital rights which from day to day we assert in the courts. He welcomed the privilege of the American lawyer not merely to insist upon the application to his client's case of the principles of American law, but to assert and defend the principles themselves before the great governing body of American citizens who make and can un-make the law. He understood that American lawyers cannot rightfully be a separate body cultivating a mystery, that they ought to be an active part of the citizenship of the Country sharing in the formation and expression of its opinion, in its social and political life, and by virtue of their special knowledge and training, leaders of opinion among their fellows in the community. He said to the Chicago Bar in February, 1898:

> "But at all times, and especially in this our day, great public duties await us. So long as the Supreme Court exists to be attacked and defended, (that sheet anchor of our liberties and of our Government), so long as the public credit and good faith of this great Nation are in peril, so long as the right of property which lies at the root of all civil government is scouted and the three inalienable rights to life, to liberty and the pursuit of happiness which the Declaration of Independence proclaimed and the Constitution has guaranteed alike against the action of Congress and of the States, are in jeopardy,—so long will great public service be demanded of the Bar.
>
> "Let us magnify our calling. Let us be true to these great occasions, and respond with all

> our might to these great demands, so that when our work is done, of us at least it may be said that we transmitted our profession to our successors as great, as useful, and as spotless as it came to our hands."

These functions of the American lawyer Mr. Choate performed with unwearying interest and devotion, and with signal distinction. He received from his Massachusetts ancestry and brought with him from his old Salem home a large measure of that amazing formative power, which, proceeding from the few scanty settlements on the Atlantic shore, has moulded this vast Continent with its hundred millions of people according to the course of the common law, and to conceptions of right inspired by the spirit of Magna Charta, and of the immortal Declaration of rights unalienable, to secure which governments are instituted.

The blood in his veins, the influences of early environment of education and training, the foundations of his political belief, all made impossible for him the conception of a free community in whose public affairs it was not the duty of every private citizen to take an active part. He took such a part as a matter of course, and with an effectiveness natural to his exceptional powers. His intense and instinctive patriotism made him keenly alive to the welfare of the Nation, and of the State and City in which he lived. The strain of labor in the Courts never prevented him from doing his full share both in government and in the public movements and private enterprises, through which a democratic community develops the best side of its nature.

At the age of 35 he was President of the New England Society in New York, the organization which

WITH

MR. ROOT'S COMPLIMENTS

for more than a century has done honor to the history and spirit of his race. At 41 he was President of the Union League Club, that Institution created in the darkest days of the Civil War to promote, encourage, and sustain absolute and unqualified loyalty to the Government of the United States. He was President of the Harvard Club, of the Harvard Law School Association, of the Century Association. For forty years before his death he was a Governor of the New York Hospital. He was President of the New York Association for the Blind. He was President of the State Charities Aid Association. He was one of the incorporators of the Metropolitan Museum of Art, and one of its Trustees for the 47 years which followed its organization in 1870; and for many years before his death he was Chairman of its Law Committee, and a member of its Executive Committee, and Vice-President. He was one of the incorporators and during all its existence a Trustee of the American Museum of Natural History. He was an active Trustee and the Vice-President of the Carnegie Endowment for International Peace. He was Vice-President of the Society for the Judicial Settlement of International Disputes. He was a member and Chairman of the Sub-Committee on Elections, of the Committee of 70, that Committee which roused the honest citizenship of New York to the rescue of the City from the shame of the Tweed Ring control. He was Honorary President and an active coadjutor in the National Defence League, which did so much to arouse the patriotic people of our Country to realize the deadly peril to their liberty of possible German military domination, and to make them understand that the time had come when American Institutions must be defended again

by force of arms, or must perish. He was not a dreamer to reject the natural agency of political parties in popular self-government, and he did not hold himself aloof from the activities of the Party which seemed to him the best agent of government. He never changed or wavered in his political allegiance. He made his first public political speech for Frémont in 1856, and his last for Hughes in 1916; but he conceived of a political Party as an organization by which many citizens agreed upon major questions of principle and policy may give practical effect to their opinions in actual government. His interest was in the public effect of Party control, not in office or emoluments. His activity was in the leadership of opinion, not in Party management; he took little or no part in that. He sought no office, and he entered into no combinations. He held no Party office. I remember that moving some 40 years ago into a new neighborhood, and attending for the first time the Republican Association of the old 21st Assembly District, I found him there attending to his duties as a citizen; and he was there as one of the rank and file. He was always in the ranks. But, when the time of conflict came between opposing Parties or against misleading leadership in his own Party, when serious decisions were to be made by the instructed judgment and conscience of the people, then he was wont to come as a champion from the ranks with all the weapons in the armory of debate, with clarity of statement and destructive satire, and power of appeal, and charm of persuasion, against things sordid and corrupt, against the follies of ignorance and prejudice, against indifference and decadence and for the cause he deemed just, for the living spirit of American institutions.

He did not reserve himself for great occasions and great efforts; but gave without reserve to the everyday activities which taken together fill so great a part of the life of the community. In the multitude of gatherings half public half social through which the members of a community are welded together in sympathy of good fellowship and of opinion, he played a leading part for almost half a century. It is hard to understand how any man engaged in the exhausting labors of a crowded professional life could find the strength and resiliency of body and mind to make speeches in vast number at public dinners and luncheons and meetings for all sorts of objects, where he delighted and instructed the crowd year after year during his long active life; yet, he did so with undiminished brilliancy until the end. It would have been impossible but for a strong and active interest in the life of the world, in everything that went on in the community, and a genuine liking for the people among whom he lived, sympathy with their feelings, and understanding of their characters. He was never uninteresting. His wit and humor never obscured or belittled his serious thought, and his serious thoughts were never dull. He richly merited the great fame he acquired as an after-dinner speaker. In viewing that phase of his activity as a whole, it is plain that he made it the means of great influence and useful service. He promoted causes and institutions in which he was interested, and inspired in the tens of thousands who listened to him not merely admiration and grateful remembrance, but respect for his authority, and acceptance of his ideas.

The reputation of many great lawyers is confined to their own profession; but the wide range of his

activities extended a knowledge of his great abilities and commanding character to the public at large, and brought appreciation from the general body of good citizens. To achieve a commanding position in the public life of this great Country ordinarily requires the holding of high office. The office itself cannot give the holder such a position, but it carries to the minds of the great multitude who have to form their judgments chiefly upon hearsay, a presumption of a right to be heard in public affairs. The presumption may not be justified and may fade out of existence, but it is the door of opportunity, and few men acquire great public consideration without it. Almost entirely without the aid of office, Mr. Choate acquired universal recognition as a great public character, a significant figure in the public life of his time, speaking with authority and entitled to leadership of opinion. This position was fully established before he was appointed Ambassador to Great Britain, and he was appointed to that office because of it. The basis of that great position was achievement at the Bar, and the devotion of powers trained at the Bar to the duties of a private citizen in the service of the community and the Country.

Nature was very kind to him. She gave him a sound body, a constitution capable of enduring without injury the strain of long continued and severe effort, and a temperament which saved him from the exhausting effect of worries and fears and passions and vain regrets, and she gave him a physical presence most impressive and attractive. He was tall, fully six feet in height, slender and erect in his early years, broad shouldered, and carrying an impression of poise and balanced strength; the leonine head was set perfectly in its place, and his face was luminous even in

repose with the beauty of intellect and nobility of character, sublimated and manifestly active and dominant. His voice was clear, pleasing to the ear, and far carrying. I do not recall that he ever strained it, or seemed to be forcing it unduly. He was never oratorical even in passages of greatest force and feeling. His manner was dignified and courtly, but perfectly simple and unaffected, and it was the same everywhere and to everybody. Forty odd years ago, when we were in the beginnings of a friendship which has been for me one of the chief satisfactions and joys of life, I used to think that he was the most beautiful and splendid specimen of manhood I had ever seen. I have revised my judgment upon this; for, after the Declaration of War with Germany, when he knew that the manhood and honor of his Country had re-asserted themselves, in the benign and radiant face with its lines of old experience and wisdom, made purer and gentler by trial and high endeavor, still alert with intelligence and feeling, shining with the joy of unselfish patriotism, and in the massive form bowed under the weight of a noble life, there was a beauty surpassing that of conquering youth; and the memory of it is a benediction.

His mind was strong, well balanced, and wonderfully alert and rapid in action. Its response to the emergencies which so continually arise in court was instantaneous, and apparently intuitive. Extraordinary power of discrimination and a sense of material and crucial questions relieved him of the burden of bothering over immaterial matters, and enabled him to work with great ease. This faculty, combined with his vast experience, led some younger men who were with him as juniors to think that he worked very little; but that was a mistaken idea. He worked very

hard and with great intensity, but he was happy in escaping the great mass of unnecessary work which most of us have to do. When he came to New York in 1855 he brought a letter from his father's cousin Rufus Choate to Mr. Evarts. He prized this letter very highly, and I am sure that he would not have exchanged it for any patent of nobility. I will reproduce it here:

BOSTON, 24 Sept., 1855.

MY DEAR MR. EVARTS,

I beg to incur one other obligation to you by introducing the bearer my friend and kinsman to your kindness.

He is just admitted to our bar, was graduated at Cambridge with a very high reputation for scholarship and all worth, and comes to the practice of the law, I think, with extraordinary promise. He has decided to enroll himself among the brave and magnanimous of your bar, with a courage not unwarranted by his talents, character, ambition and power of labor. There is no young man whom I love better, or from whom I hope more or as much; and if you can do anything to smooth the way to his first steps the kindness will be most seasonable and will yield all sorts of good fruits.

Most truly,

Your servant and friend,

RUFUS CHOATE.

The particular expression of this letter which he valued most was the reference to his "power of labor", and he never regarded as a compliment the suggestion that he reached his results without the exercise of that power.

This letter points to one of the chief influences in the development of his character and the direction of his life. No one who has watched his career and has read the address in which he paid his tribute to the majestic and lovable personality of Rufus Choate, can fail to be convinced that widely as they differed in temperament and in their surroundings, admiration and reverence for his great kinsman was one of the controlling influences of the younger life. Much as they differed, there was a striking resemblance in the standards of life, the intensity of application, the tenacity of purpose, the ardor of conflict, combined with the broad and kindly view, the strong sense of humor, the love of literature and reliance upon its broadening and humanizing influence to correct the narrowing effect of exclusively professional interests, the impulse for public service and the intense love of Country: all these were found in both the older and the younger Choate. One was the spiritual successor of the other. Rufus Choate came to the Bar in the year 1823, and he continued for four years after his young relative's admission. Thus, for almost a hundred years these two men of the same name and family, products of the same influences, and inheritors of the same traditions and the same ideals, adorned and ennobled the American Bar, and each in his turn rose to great heights of honor and renown. The younger man was fortunate also in associating during the formative period of his career with really great leaders whose influence tended along the same lines of development. How could there be broader scope or loftier spirit than he found in Mr. Evarts, the advocate and statesman, eloquent, philosophical, delightful companion, the wittiest lawyer of his time, and Mr. Southmayd, the typical solicitor,

learned, logical, cautious, independent in judgment, stubborn in opinion, caustic in expression. They were not merely partners, they were friends, and nothing could be more delightful than the intercourse between them.

Our friend was enabled to use his intellectual power to the highest advantage by two qualities of the first importance. One was his clear and instinctive courage. He was wholly free from any impediment of timidity. This quality did not impress one as being the kind of courage which overcomes fear, but, rather, as a courage which excluded fear. With him, no such emotion as fear seemed to exist. The other closely allied quality was a universal and invincible cheerfulness. In all my varied opportunities for observation for many years, he was the same. I never knew him to be sullen, or sour, or bitter, or cross, or fretful. He strongly condemned some things and some men with force and picturesque expression, but never with the least tinge of malevolence. He had his griefs, which sank deep in his heart, but his buoyant spirits and high courage forbade them to control his conduct; and, through them all, he presented the same bright and cheerful face to the world. He brought to the breakfast table always the same genial and cheery lifting of spirit which made him such a welcome guest at the banquet tables of New York. He was as lively and interesting with a dozen friends, or with one friend, as with 500, because he was entirely free from false pretence, and he was the same man with the public audience that he was with his close and private friends. He had a most serene and imperturbable temper. He never lost his self-possession or entire control of his powers. Safe

upon this ground of vantage, he took special delight in making his adversary angry, and in reaping the benefits.

He was a loyal and devoted friend, as he was loyal to every cause he espoused, and to every case he undertook; and he left no debt of friendship unpaid. No trouble was too great, no labor too arduous for him to help a friend. His power of satire and ridicule were terrible weapons, and he used them unsparingly, always most fatally when he was most gentle and childlike in manner. When engaged in battle he used all his weapons without respect of persons, and his thrusts often wounded his friends at the Bar more deeply than he probably knew. Yet, I think he never lost a battle through friendship, or lost a friend through what he said or did in battle. It was impossible to cherish resentment against him. He fought as those gay and debonnaire youths of Dumas, who drew their swords with alacrity, and, rejoicing in their skill, fought joyously upon all suitable occasions without anger or malice, to death or victory or eternal brotherhood. Before a jury he was a master of the art of appearing surprised, and of appearing indifferent; but nothing was further from his habit than personal display. Anyone with his appearance and talents might be pardoned for thinking of so agreeable a subject as his own person; but he never appeared to do so. He was thinking always of his object, and carefully studying the minds and feelings of those to whom he spoke. He studied his juries, his judges and his audiences with sympathetic insight, and his favorite method of capturing their judgment was by boldly invading the field of their personal experience and interest, making himself at home with them, and when he de-

parted leaving his own ideas with his audience as a part of their household goods. He very seldom told a story. His wit and humor did not percolate through him from the *gesta Romanorum,* or from the pages of American humorists. They were the natural reaction of his own mind from his perception of the persons and events that surrounded him at the time. He was a fountain, not a conduit, of humor. His speeches were interesting because his way of looking at men and life was fresh and original.

It is quite inadequate to say that he was always cheerful and interesting. He had in him something far beyond that, which I cannot describe to myself better than by calling it the eternal boy in him. He rejoiced in life. He spurned dull care. He bubbled over with fun. He dearly loved a little boyish mischief. That was rather a dangerous faculty, but the danger gave it zest. There is an old story (I think it belonged to Mr. Evarts) of an American assuring an Englishman that Washington could throw a dollar across the Potomac because he had thrown a sovereign across the Atlantic. Mr. Choate would never have deigned to tell that ancient joke here, but when he got to England and before an English audience he could not resist the desire to see his English friends contemplating the aerial flight of their sovereign, and he told it I think several times. It befell me to sit near him at a famous St. Patrick's Day Dinner, and he stopped at my chair and made a remark which indicated that he was having huge enjoyment with himself over something he was going to say. When he suggested that the Irish in America should redeem poor unhappy Ireland by going home, he was following the same kind of boyish im-

pulse for mischief which leads school boys to carry their disconcerting pranks to the limit of audacity.

He had great force and nobility and purity of character. He made the world his debtor by great usefulness in many fields. He deserved and received great praise and admiration for his achievements; but, after all, I think it was the delightful "boy" in him that made us love him. It was that which joined to his other qualities made him so different from ordinary men. It was that blithe spirit which gave color and life and light to the whole character.

He had something that superior intellect and character do not always give—he had distinction; and above all, he had charm—that inexplicable quality whose origins are veiled among the mysteries of life.

Mr. Choate owed his selection as a delegate at large to the Constitutional Convention of 1894 largely to the fact that there seemed little probability of a Republican success in the election of 1893. He was so much of a free lance, his shafts of ridicule had wounded so many organization leaders, that in ordinary times there was little chance of his receiving a nomination really desired by any of the faithful. The Democrats were then, however, under the astute management of Senator Hill in control of the machinery of the State Government. They were in possession of the National Government also, and the influences which had driven the Republicans from power both in the Nation and the State seemed still to be dominant. The Republican ticket for 1893 was accordingly made up rather less than usual under the influence of a desire to distribute Party rewards, and rather more than usual with a view to present a list of candidates who would secure all the chances of suc-

cess possible, and whose defeat might be regarded with philosophy on the part of the Organization. In addition to this, the fact that the work of the Constitutional Convention of 1867 had been rejected by the people, and that the work of the Constitutional Commission of 1890 had not received sufficient popular support to prevent its being ignored by the Legislature, had created an impression that the work of the proposed Convention would have no practical results. There was accordingly little pressure for nominations to the Convention, and Mr. Choate's name readily found a place at the head of the delegates at large as a means of giving distinction to the whole ticket.

When it turned out that there had been a political revolution in the State, and that the Republicans had a majority of the Convention, including all the delegates at large, his selection as President of the Convention followed as a matter of course, and for a period of nearly five months during which the Convention was in session he presided in the most delightful and effective way. He did not trouble himself very much about the technical details of parliamentary procedure. He preserved the substance of it of course; but he was very fond of getting things done, and would sometimes make the most surprising short-cuts to reach results,—always results, however, which would certainly have been reached by the more cumbrous process of slower minds, and never at the sacrifice of the substantial rights of the minority, and he always maintained his positions in such a way as to fill the souls of the majority with joy and command their enthusiastic support. Occasionally, when there was a heated debate, he would take the floor, and his speeches were always of great power and cogency. I always thought of the

Olympians joining the fray under the walls of Troy. Two speeches that rest especially in my memory are: one in support of the new judiciary article, and one upon the public schools. There had been an attempt to insert in an article reported by the Committee on Education a clause which would authorize State aid to schools under religious control. This was regarded by some of us as dangerous in the highest degree, tending to break down the separation between Church and State, and to destroy our whole unsectarian public school system. The attempt succeeded in the committee of the whole; but, when the article was reported to the Convention, there was a counter attack, and Mr. Choate left the chair, and came down to the floor, and made a fine and noble speech. The real nature of the thing that was being done was made plain, and the vote was reversed, and the obnoxious provision was defeated.

It was my good fortune to be by his appointment Chairman of the Judiciary Committee of the Convention, and that position carried by custom the leadership of the majority on the floor of the Convention, so that we were obliged to be in constant conference over the business of the session. Accordingly, we took a house together near the Capitol, and kept house jointly during the entire period, and I had exceptional opportunity to know about the influence which he exercised over the conduct of affairs. We kept open house for the members of the Convention, and almost every important Convention question was considered and discussed there. He was practically a member of every committee, and his clear vision and sound practical sense made themselves felt in every department of the Convention work through those personal conferences and discussions which properly play

so great a part in shaping the judgment and directing the action of every deliberative body.

Mr. Choate's service in the foreign affairs of the Country was of the highest value. When he was appointed Ambassador from the United States to Great Britain at the age of 67, there were several very serious and difficult questions between the two countries which required to be treated with great skill and judgment if serious controversy was to be prevented. The very positive defiance of Great Britain in Mr. Cleveland's Venezuela message of December 1895, and the general expression of American feeling in support of that defiance, had created an atmosphere not altogether favorable to mutual concessions. This had been modified, but not wholly dispelled, by Great Britain's discouragement of European intervention during our war with Spain, and by the wisdom and good sense of Mr. Hay and President McKinley on the one side and Lord Salisbury on the other during the first two years of the McKinley Administration. Only a few months before Mr. Choate's appointment a joint High Commission established for the settlement of a formidable array of Canadian questions, sitting alternately in Canada and Washington, with Lord Chancellor Herschel at the head of the British section, and Vice President Fairbanks at the head of the American section, had reached an *impasse,* and had dissolved without any settlement. The chief and apparently insuperable obstacle which barred the Commission from settlement upon any question was the deadlock over the Alaskan Boundary. That was a serious and critical matter, because at any time a new gold discovery in the disputed territory was liable to bring the miners on either side of the line into actual hostilities, and to set all Canada and Western

America aflame. Under the diplomacy of Mr. Choate in London and Mr. Hay in Washington a *modus vivendi* was established; and a treaty was made providing for the submission of the boundary questions to a tribunal composed of an equal number from each country charged to hear the evidence, and decide according to law. The tribunal sat in London in the year 1903, and by its judgment the controversy was finally determined. With that stumbling-block removed, every other question which was before the joint High Commission of 1898 has since been satisfactorily settled and disposed of.

When Mr. Choate was appointed, the United States had just reached a full realization of the necessity of a canal across the Central American Isthmus under American control. We were forced to that realization by the results of the war with Spain, the cession of Porto Rico, and the responsibility for the protection of Cuba, by the growth of population and commerce on the Pacific Coast, by the acquisition of Hawaii and the Philippines, by the appearance on the horizon of grave questions of international policy towards the Far East. It was necessary for our internal commerce and our naval protection that our Atlantic and Pacific coasts should be united by a ship canal under our control; but the way was blocked by the Clayton-Bulwer Treaty of 1850, under which the United States and Great Britain had agreed that any such canal should be practically under a partnership of the two nations. The object could not be attained while that Treaty stood. Under the wise and highly competent diplomacy of Mr. Choate in London and Mr. Hay in Washington the partnership was abandoned, and the obstacle of the Clayton-Bulwer Treaty was

removed upon the sole condition of equal treatment to the commerce of the world in the canal to be built and controlled by the United States.

When Mr. Choate went to London, China seemed to be on the verge of partition by the great Powers, who had established naval and military stations and spheres of influence in Chinese territory, and who, mutually suspicious, were reaching out each for more control, in order to prevent other powers from acquiring it. There was no escape from partition, except by stopping that process. With partition the door for American trade with China would be closed, and the opportunity of China for liberty and self-government would disappear. America alone was free from suspicion, and from that vantage ground Mr. Hay undertook to stop the process of partition by proposing a universal agreement upon the principle of the open door. Without the agreement of Great Britain effort would have been useless. It fell to Mr. Choate to secure that agreement from the British Government, and it was given cheerfully and ungrudgingly, and the principle of the open door was established in China. So far it has saved for China her territory and her opportunity to try out her experiment of self-government under Republican institutions. Incidentally, it was the relation of mutual confidence established by that agreement, which made it possible for the troops of America, England, Japan, France, and Russia, to co-operate in the march to Pekin, and the rescue of the legations in the Boxer uprising in 1900.

The diplomatic correspondence of that time shows the great part Mr. Choate played in these most important affairs, and how great was the skill and competency he exhibited in the negotiations which they involved. There were many other important things done,—and well done,—during his six years of service. Let no one suppose that results in the negotiation of such affairs come of themselves. They require long and patient labor, quick perception, judgment of character, tact, skill, and wisdom. Incompetency is fatal.

His service in direct relation to the people of Great Britain was perhaps even greater than his service in negotiation with the British Government. The most important thing in the relations between modern democracies is the feeling of two peoples towards each other. If they like each other and trust each other, any question can be settled. He carried to Great Britain the same readiness for service, the same social unselfishness, the same cheerful, brilliant and interesting qualities as a public speaker, which had made him so admired and beloved at home. He accepted countless invitations to attend countless banquets and cornerstone layings, and openings of institutions, and unveilings, and celebrations, and meetings of all kinds, and to make countless speeches. Ambassadorial dignity did not injure him in the slightest degree. He must have been often wearied, but he was never bored, for he really interested himself in the affairs and the characters of the people. He talked to them in a sympathetic way about their affairs, and he told them simply and interestingly about the great men of our history and what Americans were doing, and thinking, and feeling. He was clever and stimulating, and enveloped his serious thought there as he did here with a mantle of humor and fun. He must have kept our British cousins guessing for a while at first, but they soon came to know him, and to understand him with un-

diluted enjoyment. Upon formal and serious occasions he delivered carefully prepared addresses, admirable in literary form and in serious thought, on Benjamin Franklin, on Alexander Hamilton, on Lincoln, on Emerson and on John Harvard, on the Supreme Court of the United States, Education in America, and, appealing to the common sympathies of both countries, —on the English Bible. He represented the people of the United States to the people of Great Britain for so long a period on so many occasions in so many ways and so delightfully, as to create an enduring impression of the highest value. We did not see then as fully as we see now that a good understanding between Great Britain and the United States was no ordinary international affair, but that these two nations inspired by the same ideals of individual liberty and free self-government were destined to fight together, and stand or fall together, in defense of their common liberty against the hateful dominion of military autocracy; and that our friend's six years of unwearied labor to unite the two nations in strong ties of good understanding and kindly feeling was a special service to civilization.

The selection of Mr. Choate as an Ambassador Extraordinary at the head of the American Delegation to the Second Hague Conference in 1907 followed naturally upon his career at home and in Great Britain. No other man in the United States had shown himself possessed in so high a degree of so many of the qualities necessary for that service. He had learning without pedantry, power of expression which never sacrificed accuracy to rhetoric, or sense to sound, courage saved from rashness by quick perception and long experience, the lawyer's point of view and the statesman's point of view, the technique of forensic

debate, and the technique of diplomatic intercourse. His brilliant success in the Embassy to Great Britain and the high position which he had acquired there had made his great reputation known to the public men of Europe, who at that time ordinarily knew little and cared less about American lawyers, so that he was able to speak at The Hague with great personal prestige and authority. His work at The Hague fully met the expectations of his Government, and fully justified his selection, for he became one of the great leaders of the Conference and held a commanding position in its deliberations, and under him the whole American delegation worked together with admirable team play. If any part of his work were selected for special praise, it should be his addresses upon the immunity of private property at sea, on International Arbitration and on the establishment of an International Court of Justice, all of which show very strikingly how much this Country lost when New York failed to send Mr. Choate to the United States Senate in 1897. The events of the Great War have tended to obscure in most minds the value of the things done in The Hague Conferences; but that is only because the irresponsible brute force of Germany and her allies has thrown over the whole world the dark shadow of a revolt of barbarism against modern civilization. Notwithstanding the fact that all the rules of international law declared or agreed upon in The Hague Conferences have been flouted and broken and ground to powder, during the past three years, and notwithstanding that the idea of a peaceable settlement for international disputes seems for the moment to have slipped back into the company of idle dreams, yet the declarations and agreements of those Con-

ferences took many fundamental principles and rules of the law of nations out of the obscurity of inaccessible treaties and conflicting text writers, and made them a distinct and known basis on which the world has rendered its judgment of condemnation upon the conduct of Germany and her allies. And when modern civilization re-asserts its control,—as it is sure to do,—the community of nations seeking to regulate its affairs so that peace rather than war may be normal, will inevitably make its starting point from the platform established by Mr. Choate and his colleagues at the Second Hague Conference. A multitude of plans for the re-organization of the world after the war have been appearing continuously ever since the war began. Most of them settle everything except the difficulties; but they are all alike in one respect. Their postulates are identical with the conclusions reached by the Second Hague Conference on questions which had been doubtful and controverted.

But the greatest of all the services which Mr. Choate rendered to his Country in his long and useful life was at the close, when he realized—as he did very soon after the beginning of the war—that the independence and liberty of the United States were threatened less immediately but not less certainly than those of England and France, by the German grasp for military dominion. With all the vigor and strong conviction of youth he abandoned the comfortable leisure to which the ninth decade of his life entitled him, and threw himself with enthusiasm into the task of making his Countrymen see as he saw the certain dangers that lay before them, and the duty that confronted them to rouse themselves and act, for the preservation of their own liberties and the liberties of the world. With

voice and pen he pressed his appeal with all the authority of his great reputation, with the wisdom of his experience, the power of an intellect undimmed, of a heart still warm, with the intensity of a great and living patriotism. When that appeal and the appeal of others who thought and felt with him were answered, and the great decision was made that committed a slowly awakening people to struggle and sacrifice for the preservation of the institutions which he had defended all his life, a great relief and joy possessed him. He was made Chairman of the New York Committee for the reception of the Commissions from England and France under Balfour and Viviani and Marshal Joffre, who came to America after the declaration of war to confirm and help to make immediately practical and effective the new league of Democracy for the war against autocracy. It was his part to lead the people of his own City in a reception of our new Allies, so generous and warm-hearted as to strike the imagination of the people of all three countries.

He met the French Commission and then the British Commission. He welcomed them in our behalf with gracious and impressive hospitality. He rode with them through the streets thronged with cheering crowds, and shared with them the respect and homage accorded to the significant and representative figures of that great and unique occasion. He attended all the receptions and banquets, and public and private entertainments, by day and by night, which attended their visits. Daily and sometimes twice, and sometimes three times a day, he made public addresses, appropriate and dignified, and full of interest and deep feeling. His adequate representation filled his own

people with pride, and aroused their patriotism and their noblest qualities, and he impressed our guests with confidence and satisfaction.

When the final service of the crowded week was finished, at the Cathedral of St. John the Divine on Sunday, the thirteenth of May, he bade Mr. Balfour good-bye with the words "Remember, we meet again to celebrate the victory", and with stout and cheerful heart he bore the burden of his years to his home to meet the physical reaction that he had been warned was inevitable; and in a few hours the great heart filled with the impulses of noble service and with love of Country, and liberty, and justice, ceased to beat. He had given his life for his Country.

The Association of the Bar of the City of New York

CHOATE MEMORIAL MEETING
December 20, 1917

MINUTE AND RESOLUTION

At a special meeting of THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK held on December 20, 1917, called to commemorate the life and services of JOSEPH HODGES CHOATE, the following minute was unanimously adopted as an expression of the profound sense of loss on the part of the members of the Association and of their appreciation of Mr. Choate's pre-eminent professional and public services:

The members of the Association deeply feel and deplore the great loss suffered by the American Bar in the death of Mr. Choate, and hereby record their recognition of his exceptional achievements, his splendid talents, his pure and noble character and his unique and charming personality, and their gratitude for the distinction, honor and glory which have been and will long continue to be reflected upon the profession by his life and services.

Throughout his professional career, Mr. Choate displayed extraordinary ability, versatility, eloquence and devotion to his profession in the many branches of public and private law with which he was called upon to deal, and his conduct was always characterized by the observance of the highest professional and ethical standards. He filled in the fullest degree the measure of a great lawyer and a great citizen, and is justly

ranked with the most eminent of American advocates and patriots.

Mr. Choate's professional services were rendered not only in defending the rights of individual clients and aiding the courts in the impartial administration of justice, but in promoting and maintaining, with all the powers of his remarkable talents, ardent patriotism and uncompromising courage, the American system of government, ever urging and teaching that the primary duty of the profession is to perpetuate American constitutional institutions, for which he felt the greatest reverence and in which he had the most implicit faith.

Among the many conspicuous public services of Mr. Choate were those rendered as President of the Constitutional Convention of 1894, as Ambassador to the Court of St. James, and as Ambassador Extraordinary and Chairman of the delegation representing the United States at the Second Hague Conference of 1907. But we desire especially to emphasize his services from August, 1914, to the end of his life in directing and shaping public opinion and in striving with spiritual fervor and eloquence undimmed by age so to stir the conscience and patriotism of the American people in a great crisis and in the face of the outrages and horrors attending the European war that America should be ready and eager to enter into the conflict in defense of the rights of our own citizens and of humanity and civilization throughout the world.

Mr. Choate's life and services will long bear fruit in the noble example which they have set for the inspiration and emulation of the members of his own profession and of the citizens of the Nation.

Those who had the great privilege of knowing Mr. Choate personally can never forget his singularly pure

and elevated character, his invincible optimism, his genial personality, his gracious charm, his unsurpassed wit and humor, his deep and generous sympathy with his brethren at the bar who were in need of help, advice or consolation, his innumerable acts of kindness to associates and juniors, his broad charity and philanthropy, and his constant interest and activity in everything that tended to promote the instruction, welfare and happiness of the community.

RESOLVED that the memorial of Mr. Choate prepared by Mr. Root and read at this meeting be adopted with the grateful thanks of the Association as most perfectly and eloquently voicing the sentiment and appreciation of its members, that together with this minute it be made a permanent record of the Association, that a copy be sent to the family of Mr. Choate by the President, and that it be printed and distributed as the Executive Committee may direct.

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TITLE